IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4119 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANCELLOR, GUJARAT AYURVED UNIVERSITY

Versus

PRATIKSHA ISHWARLAL JANI

Appearance:

1. Special Civil Application No. 4119 of 2001

MR RC KAKKAD for Petitioner No. 1

MR KISHOR M PAUL for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 18/01/2002

ORAL JUDGEMENT

#. Heard Mr.R.C.Kakkad, learned advocate appearing on behalf of the petitioner and Mr.K. M. Paul, learned advocate for respondent - workman on caveat.

Rule. Mr.K.M.Paul, learned advocate waives service of Rule for respondent workman.

#. In the present petition, the petitioner has challenged the award passed by the Labour Court, Jamnagar in Reference No.43 / 1993 dated 6th December, 2000, whereby the labour court has set aside the termination order and granted continuity of service with 75 % for interim period as during pendency of Reference, the respondent workman has been reinstated by the petitioner in July, 2000. Learned advocate Mr.R.C.Kakkad has submitted that there were two orders of appointment issued by the petitioner in favour of the respondent workman, of which, the first is dated 19th September, 1991 for period of three months and the second is dated 17th December, 1991 for period of three months and thereafter, her services were terminated on 21st March, 1992. Therefore, the contention that the respondent workman has not completed 240 days continues service and Section 25-F is not required to be followed. It is also submitted that during the pendency of the Reference, an offer was made to the respondent workman to join services and to withdraw the Reference which was filed by the respondent workman but the respondent workman has not accepted said offer and not joined the services as offered. Therefore, the submission before this Court is that the respondent workman is not entitled to any amount of backwages. It is also submitted that the labour court has committed gross error in relying upon three orders issued by the petitioner but in fact, only two orders have been issued by the petitioner. It is also submitted that subsequent to termination of the respondent workman, even if three junior lady workmen have been appointed in violation of provisions of Section 25-G & H, then also the labour court has committed gross error in granting 75 % backwages from the date of termination. Mr.Kakkad, learned advocate has also submitted that in all, the respondent workman has completed mere 180 days and even if the provisions of Section 25-H are violated, in that case, considering at least six months service, back wages of total period from 1993 to July, 2000 is absolutely unwarranted and therefore, the labour court has not clearly applied its mind while granting backwages in favour of the respondent workman. Therefore, it is pointed out that on the basis of these errors committed by the labour court, interference of this Court is warranted in the facts and circumstances of the case in the interest of justice.

#. Learned advocate Mr.K.M.Paul appearing on caveat on behalf of the respondent workman has submitted that it is

not correct to say that only two orders were issued by the petitioner. In fact, one order dated 19th July, 1991 has been issued by the petitioner in favour of the respondent workman which is at Annexure-B pg.25, wherein as such no limited period is prescribed but the same is ordered to be valid till regular appointment on the post in question. The respondent workman was appointed by fixed salary of Rs.300/- and therefore, if actual working days from 19th July, 1991 to 21st March, 1992 if it is calculated, in that case, the respondent workman had completed 230 days and if the Saturdays and Sundays falling in between are counted, the respondent workman has completed 240 days continues service. However, Mr.K.M.Paul, learned advocate has placed reliance on a case of American Express Company reported in AIR 1986 SC pg.458. Therefore, he submitted that the petitioner was required to comply provisions of Section 25-F of the I.D. Act. It is also submitted that there is no dispute between the parties that according to the deposition of the respondent workman that respondent workman was senior qua three lady workmen and said junior lady workmen remained continued in service at the time of termination of the respondent workman. Not only this, thereafter their services were terminated by the petitioner and subsequently, they were recruited again in the year 1994. Therefore, at that time, there was no effort made by the petitioner to reinstate the respondent workman and resultantly, there was breach of the provisions of Section 25-H of the I.D.Act, 1947 which is enough to set aside the termination order and the respondent workman is entitled to reinstatement with backwages. It is also submitted that offer which was made by the petitioner was conditional one. However, vide Exh.36 said offer was accepted but after receiving Exh.36 by the petitioner, no appointment order has been issued in favour of the respondent No.1. Therefore, considering all the aspects which are referred by the labour court, the labour court has rightly awarded 75 % backwages from the date of termination and continuity of service and therefore, no interference is required by this Court while exercising the powers under Article 226 and 227 of the Constitution.

#. I have considered the submissions made by the learned advocates for the parties. The fact remains that contention which has been raised by the learned advocate Mr.R.C.Kakkad that in all, two orders have been given, does not seem to be correct because the order at pg.25 dated 19th July, 1991 which is on record, has not been denied by the learned advocate Mr.Kakkad. While calculating the working days of the respondent workman with effect from 19th July, 1991 to 21st March, 1992 the

respondent workman has completed 230 days continuous service, wherein the holidays were not included. However, if the holidays were included as observed by the Apex Court in the judgment more than one in number, the respondent workman has completed 240 days. Therefore, the view taken by the labour court that provisions of Section 25-F has been violated, for that, the labour court has not committed any error. Similarly, three lady junior workmen were recruited in the year 1994. This is also undisputed fact between the parties and therefore also, mandatory provisions of Section 25-H has been violated and on this count also, the termination order has rightly been set aside by the Labour Court.

#. Now only the question arise of granting of backwages of interim period as per the observations made by the labour court in para-8 of its judgment. It is true that in the oral evidence of the respondent workman, wherein it is stated that she remained unemployed during the interim period and the petitioner has not proved contrary that the respondent workman was employed but the labour court has believed that such long period, no employee can remain unemployed and therefore, considering this fact, the labour court has granted 75 % backwages for interim period to the respondent workman. But considering all the aspects of the matter and material on record, in view of this court, the labour court has committed error on this aspect while granting 75 % backwages from the date of termination till the date of reinstatement in July, 2000. The reason is that at the time of termination, the respondent workman has completed 230 days. Furthermore, three ladies admittedly junior to the respondent workman were recruited in the year 1994. Considering these aspects and looking to the factual aspects, in all total service which has been rendered by the respondent workman about 230 days deducting the holidays. After all, the petitioner is University - State Authority and therefore, considering all these aspects of the matter, according to my opinion, the amount of backwages which has been granted by the labour court to the extent of 75 % from the date of termination is quite on higher side. In view of this fact, learned advocate Mr.K.M.Paul appearing on behalf of the respondent workman has made statement that the respondent workman is prepared to forego backwages of interim period for the period from the date of termination till January, 1994. Mr.K.M.Paul, learned advocate has made it clear that the respondent workman will not claim any backwages of the said period till January, 1994. However, so far the rest of the backwages from January, 1994 till July, 2000 as awarded by the labour court, the respondent workman has agreed to reduce

the same to the extent of 50 % backwages. However, after considering all the factual aspects of the matter, a fair statement to this effect is made by the learned advocate Mr.K.M.Paul appearing for the respondent workman. In above view of the matter, according to my opinion, it is reasonable to grant 50 % backwages to the respondent workman for period from January, 1994 to July, 2000. Therefore, accordingly the award passed by the Labour Court, Jamnagar in Reference No.43 / 1993 dated 6th December, 2000 is required to be modified accordingly.

#. In the result, present petition is partly allowed. The award passed by the Labour Court, Jamnagar in Reference No.43 / 1993 dated 6th December, 2000 is modified to the extend that now the respondent workman is entitled to backwages upto 50 % only for the period from January, 1994 to July, 2000. Award of reinstatement with continuity of service remains intact. It is further directed to the petitioner to pay 50 % backwages, as directed above, to the respondent workman for the period from January,1994 to July, 2000 within period of two months from the date of receiving the copy of this order. Rule is made absolute with no order as to costs.

Date : 18-1-2002 [H.K.Rathod, J.]

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